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07 UNITED STATES DISTRICT COURT  
08 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

09 LEWIS VINCENT HUGHES, ) CASE NO. C05-0190-JCC  
10 ) (CR04-411-JCC)  
11 Petitioner, )  
12 v. )  
13 ) REPORT AND RECOMMENDATION  
14 UNITED STATES DISTRICT COURT FOR )  
THE WESTERN DIVISION OF )  
15 WASHINGTON, SEATTLE DIVISION, )  
Respondent. )  
\_\_\_\_\_ )

16 INTRODUCTION AND SUMMARY CONCLUSION

17 Lewis Vincent Hughes is a former federal prisoner who seeks relief in this action from his  
18 January 2005 conviction and sentence. It appears that petitioner's sentence expired in June 2005.  
19 The application for writ of habeas corpus which was submitted to this Court for review challenges  
20 the legality of Hughes' restraint on the grounds that he was charged under an invalid law and his  
21 prosecution therefore violated due process.<sup>1</sup> This Court, having reviewed the pending application  
22 for writ of habeas corpus, concludes that the application should be denied and this action should  
23 be dismissed with prejudice.

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25 <sup>1</sup> The instant application for writ of habeas corpus is essentially a motion under 28 U.S.C.  
26 § 2255 to vacate, set aside, or correct a federal court sentence. The application cites to 62 Stat.  
967 and 63 Stat. 105 as the basis of this Court's jurisdiction over the application. However, these  
citations are merely the statute at large citations for the enacting legislation for § 2255.

01 BACKGROUND

02 On August 25, 2004, Hughes was arrested on charges of resisting and impeding federal  
03 agents in the performance of their duties in violation of 18 U.S.C. § 111(a)(1), and obstructing and  
04 resisting officers of the United States in violation of 18 U.S.C. § 1501. (CR04-411JCC, Dkt. No.  
05 1.) The charges filed against Hughes arose out of an attempt by federal agents to execute a search  
06 warrant at Hughes' residence. (*See id.*)

07 Hughes was brought before the court for an initial appearance on August 26, 2004, and  
08 was subsequently ordered detained pending trial. (*Id.*, Dkt. Nos. 4, 6 and 11.) On September 8,  
09 2004, a federal grand jury returned an indictment charging Hughes with forcibly resisting and  
10 impeding federal agents in performance of their duties in violation of 18 U.S.C. § 111(a)(1), and  
11 with resistance to an official search in violation of 18 U.S.C. § 2231(a). (*Id.*, Dkt. No. 18.)  
12 Hughes proceeded to trial on the charges. The charge of resistance to an official search was  
13 dismissed by the government at trial. (*See id.*, Dkt. No. 78.) On October 22, 2004, Hughes was  
14 found guilty on the charge of resisting and impeding federal agents in the performance of their  
15 duties. (*Id.*, Dkt. Nos. 78 and 84.) On January 21, 2005, Hughes was sentenced to ten months  
16 confinement. (*Id.*, Dkt. No. 108.) It appears that Hughes' sentence has now expired.

17 The instant application for writ of habeas corpus was originally filed in the United States  
18 District Court for the District of Columbia on January 13, 2005. The application was filed in this  
19 Court on January 28, 2005, and was referred to the undersigned on June 17, 2005. A review of  
20 the application reveals that, while it was filed on behalf of Lewis Vincent Hughes, it was actually  
21 prepared and signed by Edward William Wahler pursuant to a power of attorney executed by  
22 Hughes.<sup>2</sup> No response was ordered to the application for writ of habeas corpus because it is clear  
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25 <sup>2</sup> On July 8, 2005, the Court received a document entitled "Writ of Error *Corum Vobis*  
26 Mandatory Judicial Notice of Dismissal" from Hughes himself. In that document, Hughes requests  
that this Court set aside the judgment entered in his criminal case and release him from his  
unlawful confinement. While not entirely clear, it appears that the purpose of Hughes' most recent  
filing is to obtain a ruling on the application for writ of habeas corpus.

01 from the face of the motion that petitioner is not entitled to relief.

02 DISCUSSION

03 The application for writ of habeas corpus now before this Court for review was filed on  
04 behalf of Lewis Vincent Hughes in an attempt to challenge the constitutionality of Hughes'  
05 confinement. However, as noted above, it is clear from the face of the application that the  
06 application was, in fact, signed by Edward William Wahler pursuant to a power of attorney  
07 executed by Hughes. (*See* Dkt. No. 1 at 3.)

08 The Ninth Circuit made clear in *Johns v. County of San Diego*, 114 F.3d 874 (9<sup>th</sup> Cir.  
09 1997), that an individual acting pursuant to a general power of attorney does not have the right  
10 to assert a constitutional claim on behalf of another individual. As the Court explained,  
11 “constitutional claims are personal and cannot be asserted vicariously. While a non-attorney may  
12 appear pro se on his own behalf, he has no authority to appear as an attorney for others than  
13 himself.” *Id.* at 876 (citations and internal quotes omitted). Because it is clear from the face of  
14 the application that Mr. Wahler is attempting to assert constitutional claims on behalf of Hughes,  
15 the Court cannot entertain the application for writ of habeas corpus.

16 In addition, even assuming the instant application were properly before the Court, the  
17 application fails to establish that Hughes is entitled to any relief from his conviction and sentence.  
18 Mr. Wahler asserts, on behalf of Hughes, that Hughes is being illegally restrained because he was  
19 prosecuted under an invalid law. Mr. Wahler contends that Titles 18 and 28 of the United States  
20 Code are invalid because Congress was not in session on June 25, 1948, the date these laws were  
21 purportedly enacted.

22 Mr. Wahler’s contention that Hughes was prosecuted under an invalid law is frivolous.  
23 Hughes was charged and convicted under Title 18. Title 18 was enacted into positive law by the  
24 Congress of the United States on June 25, 1948. *See* 62 Stat. 683. When a title of the United  
25 States Code has been enacted into positive law, the text of the Code constitutes “legal evidence  
26 of the laws.” 1 U.S.C. § 204(a); *see United States Nat’l Bank of Or. v. Indep. Ins. Agents of Am.*,

01 *Inc.*, 508 U.S. 439, 448 n. 3 (1993). Title 18 is a valid law. Mr. Whaler offers no persuasive  
02 authority to the contrary.

03 To the extent Mr. Wahler also intends to argue that the federal government had no  
04 jurisdiction to prosecute Hughes for activities that occurred on his private property, and that the  
05 trial court had no jurisdiction to allow the prosecution, the argument is also frivolous. Hughes  
06 was charged with committing offenses against the laws of the United States, in Snohomish, within  
07 the Western District of Washington. The United States Attorney for the Western District of  
08 Washington is charged with prosecuting all such offenses, *see* 28 U.S.C. § 547, and this court has  
09 original jurisdiction over all such offenses, *see* 18 U.S.C. § 3231. Thus, Hughes was properly  
10 charged in this court and this court properly exercised jurisdiction over petitioner's criminal  
11 proceedings.

12 CONCLUSION

13 For the reasons set forth above, this Court recommends the application for writ of habeas  
14 corpus filed on behalf of Lewis Vincent Hughes be DENIED and that this action be dismissed with  
15 prejudice. A proposed order accompanies this Report and Recommendation.

16 DATED this 1st day of August, 2005.

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18 Mary Alice Theiler  
19 U.S. Magistrate Judge  
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